

In re National Prescription Opiate Litigation: MDL 2804

**PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' *DAUBERT*
MOTION TO EXCLUDE THE OPINIONS OFFERED BY JONATHAN GRUBER**

Summary Sheet of Concise Issues Raised

Motion Name: Defendants' *Daubert* Motion to Exclude the Opinions Offered by Jonathan Gruber (Dkt. # 1765)

Concise Description of Issues:

Defendants fall far short of their burden to exclude the opinions of Professor Jonathan Gruber. Prof. Gruber, a prominent health economist from MIT with experience analyzing the economics of addictive behaviors, uses well-accepted economic methodologies and approaches to conclude that increased prescription opioid shipments led to increased harms, including illicit opioid-related harms. His opinions are reliable and relevant, and will assist the trier of fact.

Prof. Gruber used a variety of basic economic tools and applied them to analyze several datasets encompassing more than 20 years of information. Prof. Gruber also relied on peer-reviewed epidemiological and economic studies that similarly conclude that increased prescription opioid shipments caused increased illicit opioid-related harms, a common-sense result this Court has recognized. *See* Op. and Order on Motions to Dismiss, Dkt. # 1203 at 35 (“When there is a flood of highly addictive drugs into a community it is foreseeable—to the point of being a foregone conclusion—that there will be a secondary, “black” market created for those drugs.”). Defendants’ challenges rest on mischaracterizations of Prof. Gruber’s Report and incomplete citations to his deposition testimony. Although Defendants argue that his analysis shows only correlation, not causation (a characterization with which Prof. Gruber does not agree), that issue goes to the weight, not the admissibility, of Prof. Gruber’s testimony.

Professor Gruber’s opinions linking shipments to harms are also plainly relevant to Plaintiffs’ claims that, among other things, Defendants caused an unreasonable interference with the public health and safety in the Bellwether Counties, and that Defendants are liable for the increased costs incurred by these Counties. Prof. Gruber’s national model, which notably also analyzes Bellwether specific data, is clearly helpful in assisting the trier of fact with a framework regarding the impact of shipments on harms, including the illicit opioid-related harms that many areas of the country and in particular the Bellwether Counties have experienced in recent years.

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Response Date: July 31, 2019

Reply Date: August 16, 2019